

REMARKS

Claims 1-47 remain pending in the application.

The Applicants respectfully request the Examiner to reconsider earlier rejections in light of the following remarks. No new issues are raised nor is further search required as a result of the changes made herein. Entry of the Amendment is respectfully requested.

Claims 1-10, 15 and 17-47 over an Aether Confidential Reference

In the Office Action, claims 1-10, 15 and 17-47 were rejected under 35 U.S.C. §102(b) as allegedly being anticipated by Aether Technologies confidential copy of “*AIM.net Architecture Version 1.1*” (“Aether Confidential Reference”). The Applicants respectfully traverse the rejection.

The Aether Confidential Reference is clearly marked “*not* indeed for distribution outside of Aether” on page 6. The Aether Confidential Reference was not “published” for public disclosure and does not qualify as prior art under 35 U.S.C. § 102(b).

The Affidavit filed March 17, 2005 allegedly lacks “the fact that to the best of the assignee’s knowledge the document was NOT published or available to the public before or on the filing date of the application (See Office Action, page 17). The Applicants are herein submitting a new Affidavit to support the fact that the Aether Confidential Reference’s was NOT published or available to the public before or on the filing date of the subject Application.

Thus, the document was not “published” for public disclosure and does not qualify as prior art under 35 U.S.C. § 102(b). Because this rejection is not based on prior art, it cannot properly stand. The Applicants respectfully request the rejection of claims 1-10, 15 and 17-47 be withdrawn.

Claims 11-14 and 16 over an Aether Confidential Reference in view of Meyer

In the Office Action, claims 11-14 and 16 were rejected under 35 U.S.C. §103(a) as allegedly being obvious over Aether Confidential Reference in

view of U.S. Patent No. 6,778,099 to Meyer et al. ("Meyer"). The Applicants respectfully traverse the rejection.


As discussed above, the Aether Confidential Reference does not qualify as prior art.

Since the rejection of claims 11-14 and 16 cannot stand on Meyer alone, the Applicants respectfully request the rejection of claims 11-14 and 16 be withdrawn.

Conclusion

All objections and rejections having been addressed, it is respectfully submitted that the subject application is in condition for allowance and a Notice to that effect is earnestly solicited.

Respectfully submitted,



William H. Bollman
Reg. No. 36,457

Manelli Denison & Selter PLLC
2000 M Street, NW
Suite 700
Washington, DC 20036-3307
TEL. (202) 261-1020
FAX. (202) 887-0336
WHB/df



AFFIDAVIT

1. My name is Bob Bialozynski, and I was employed by Aether Technologies on or about December 20, 2000.

2. Aether Technologies' confidential document entitled AIM.net Architecture Version 1.1, was an internal company document as of December 20, 2000, not intended to be viewed by persons outside of Aether Technologies. The document itself so states on page 6. To the best of my knowledge, AIM.net Architecture Version 1.1 was not published and not available to the public on or before December 20, 2000.

3. I declare under penalty of perjury that the foregoing is true and correct.

Robert M. Bialozynski J.
Signature

Director of Engineering
Title

6/27/2005
Date